



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP

Introduction

This hearing was set to deal with an application by the tenants for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent; granting them more time in which to make that application; reimbursing them for the cost of emergency repairs; compelling the landlord to make repairs; and reducing the rent for repairs, services or facilities agreed upon but not provided.

As set out in the Interim Decision dated January 28, 2016, the tenants' application for an order setting aside the 10 Day Notice to End Tenancy for Non-Payment of Rent was granted; and the tenants' application for a monetary order and an order reducing the rent were dismissed with leave to re-apply. This hearing was restricted to the tenants' application for a repair order.

The hearing commenced January 26, 2016. Both sides appeared and gave affirmed testimony. The parties were not able to complete their testimony in the time set aside for the hearing so it was continued on March 2, 2016, at 9:00 am, a date and time convenient for all.

On February 29 the landlord filed three pages of late evidence. I did not accept the documents into evidence. The landlords did provide oral testimony about some of the information contained in the letter from the plumber.

On March 2 the landlords appeared at 9:00 am. After some preliminary discussion I proceeded to hear the landlord's testimony. The tenants called in at 9:19 am. I gave the tenants a summary of the discussion and the testimony. I then heard the balance of both parties' testimony.

Issue(s) to be Decided

Should a repair order be made and, if so, on what terms?

Background and Evidence

The two year fixed term tenancy commenced July 1, 2015. A written tenancy agreement was not signed until August 16, 2015. The tenancy agreement listed two people as the tenants; one is the applicant CL. The other tenant named on the tenancy agreement no longer lives in the

rental unit. The second applicant on this proceeding is not named on the tenancy agreement; she is one of the three other occupants of the rental unit.

The tenancy agreement provided for a monthly rental payment of \$1600.00, due on the first day of the month. Neither a security deposit nor a pet damage deposit was collected.

The rental unit is a house located on a rural property. The unit is not connected to municipal sewer or water.

The tenancy agreement specifies that electricity is not included in the rent. The tenant says she understood this when they entered into the tenancy agreement.

At first the tenant and the occupant testified that B C Hydro told them an inspection and a \$3000.00 deposit was required before the hydro could be connected but if the account was in the landlord's name, no deposit would be notified. They said they spoke to the landlord who agreed to put the account into his name on the condition they paid the rent to date. The tenant and the occupant testified that they paid the rent but the landlord failed to put the account into his name. As a result they have been living without a hydro connection throughout the tenancy. They have been using generators for electrical power and have found the cost of operating them very expensive. As the pump for the well is electric interruptions in the power supply also means interruptions in the water supply.

The landlord testified that a few weeks into the tenancy the tenants were caught stealing electricity from another home located near the rental unit. The owner of that house testified that he does not live in it so did not notice the cable, which was hidden in the grass, running from the hydro meter of his house to the rental unit for a little while. When he finally did, he called the police. The police called B C Hydro, who attended that day. B C Hydro disconnected the cable from his house.

The tenant and the occupant acknowledged that this had happened. They said it was one of the other occupants of the rental unit who had done this without their knowledge and when the theft was discovered they kicked that occupant out. They also advised that B C Hydro disconnected the hydro connection to the rental unit.

They testified that they apologized to the landlord for what had happened and that is when they asked the landlord to put the B C Hydro account into his name.

The landlord testified that at first he was prepared to co-operate with the tenants. He was prepared to put the account into his name and collect the hydro account with the rent from the tenant. He had had the same arrangement with other tenants in the past. However, as the tenants did not pay the rent he was not prepared to assume the cost of hydro as well.

The landlord testified that he has not received any rent from the tenants since August. On January 25 the tenant and the occupant testified that they had paid the rent up to and including December. On March 2 they testified that they had paid the rent every month except the last month. On both occasions they said the landlord refused to provide receipts for the payments made. The landlords testified that they have provided receipts to other tenants in the past and have no difficulty in doing so. They also reiterated that although they have attempted to collect the rent on many occasions the tenants have refused to pay.

The rental unit is on a septic tank system. The tenant and the occupant testified that they have had trouble with the sewage system since they moved in. They testified that overflow from the septic tank has filled the yard and the sewer regularly floods the rental unit.

The landlord testified that the system worked well for the last tenant and the tank was pumped in April 2015. His experience is that the tank usually needs to be pumped every two years and he has always paid for the pump-out.

In the Interim Decision I made the following order:

“The landlord is ordered to:

- Have the septic system inspected by a qualified septic service as soon as possible.
- Have the septic service provide a written statement of its observations and recommendations.
- Provide a copy of that report to the tenants and to the Residential Tenancy Branch, before March 2.
- If the landlord chooses not to make any repairs recommended by the septic service before March 2 the landlord must be prepared to offer his rationale for not doing so at the continuation date. The landlord should understand that an inadequate explanation may be reflected in a future order for rent reduction.

On March 2 the landlord testified that he contacted a plumber immediately after receiving the Interim Decision. The plumber went to the rental unit on two occasions, accompanied by the landlord. On each occasion they knocked on the door but the occupants did not let them in. The tenant and the occupant testified that there is almost always someone at the house and no one has come about the septic system.

The landlords testified that they have been in communication with the police about various situations at the rental unit. On one occasion the landlord's daughter went to the rental unit with a police officer. When they knocked on the door the occupants refused to answer. The police advised the daughter that the occupants never answer the door for the police and the landlords should not go to the rental unit on their own. The tenant and the occupant testified that the police come every night to check on the occupant and they always answer the door.

Analysis

Only the individuals named on the tenancy agreement have any rights under the tenancy agreement or the *Residential Tenancy Act*. Tenants are responsible for the actions of anyone they allow into the rental unit.

The tenancy agreement specifically provides that electricity is the tenants' responsibility. The tenant has no electricity for two reasons: the actions of a former roommate and the inability to pay the deposit required by B C Hydro. Neither of these reasons is the result of any action by the landlord.

The tenants argues that they had a subsequent oral agreement regarding the B C Hydro account with the landlord; they have complied with the terms of the oral agreement; and therefore landlord is obligated to comply with his side of the agreement. For that to be the case the tenant has to satisfy me, on a balance of probabilities, that the rent has been paid as agreed upon. The only evidence before me is the conflicting oral testimony of the parties. In this hearing, there is nothing to tip the balance of probabilities in the tenants' favour. Accordingly, I do not find that the tenants have paid the rent as stated. This conclusion is specific to this hearing only and is not intended to bind any arbitrator who may have to decide, at some point in the future, whether the tenants have paid the rent or not.

Further, even if I accepted the tenant's evidence that they have paid the rent, on two occasions the testimony has been that the rent is a month in arrears, which is not the same as paying the rent as required.

Regarding the septic system I accept the landlord's evidence that he has made efforts to inspect and repair the situation and I am not convinced by the tenant and occupant's protestations otherwise.

However, maintaining the septic system is essential to maintaining the value of the property so I am ordering the landlord to make one last effort to inspect the septic system. **I order the landlord to:**

- give the tenant proper written notice of entry before attending the rental unit with the plumber. (Information on the notice of entry requirements of the *Residential Tenancy Act* may be obtained from the Residential Tenancy Branch. The landlord may wish to have a police officer accompany he and the plumber but that is his decision.)
- have the plumber provide a written statement of his observations and recommendations; and,
- provide a copy of that report to the tenant;

by March 31, 2016.

Once the plumber's recommendations are received by the landlord he should make the required repairs as soon as possible, and in any event, within 30 days of the inspection. If the landlord does not comply with this order the tenant may apply to the Residential Tenancy Branch for any order that may be appropriate.

If the landlord and the plumber are not able to access the rental unit on the date and time specified on the notice of entry the landlord is not required to take any further steps for the repair of the septic system, unless all the necessary arrangements are made by the tenant or an arbitrator makes another repair order.

Conclusion

A partial repair order has been made. As the tenant did not pay a fee to file this application no further order is required.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 02, 2016

Residential Tenancy Branch